



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/786,732

02/25/2004

James E. Haley

40030-10087

2743

21788 7590 09/03/2008

RYNDAK & SURI LLP  
200 W. MADISON STREET  
SUITE 2100  
CHICAGO, IL 60606

EXAMINER

CARTAGENA, MELVIN A

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

09/03/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears the cap claimed in line 1 of claim 14 is a double inclusion of the cap claimed in line 23 of claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 14-16, 20, 21, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,762,612 to Miller.

Miller shows a bottle stopper as seen in Figs. 1-4, having a cylindrical body formed of a resilient material, a part to be inserted in the opening of a bottle, an upper substantially cylindrical part extending above an air passage 24, a pour opening 16 composed of a plurality of uniformly spaced apertures 29 that extend across substantially an entire cross section of the upper portion and encircles the air passage, a visual indicator 20 extending about 0.1 inches and having a slope of about 50 degrees that also forms an anti-drip spout, a sealing cap 30 with a

Art Unit: 3754

circumferential sealing ring 66 that seals the pouring and air passage from the atmosphere and is attached to the cylindrical body by threads 60. The device of Miller is used to pour product from a container.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,762,612 to Miller in view of US 4,128,189 to Baxter.

Miller shows all claimed features as discussed above except for the visual indicator being an indentation or color marking. Baxter shows a spout with protuberance 66 separated 180 degrees from the air passage 60, an indentation 78 and the use or covers of different colors, see column 3, lines 50-53. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use color to identify the pour spout in combination with an indentation and protuberance for an anti-drip spout feature indicating the proper pour orientation in the device of Miller as taught by Baxter in order to fit into a harmonious color style with the remainder of the container including the label on the container.

7. Claims 12, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,762,612 to Miller in view of US 5,228,603 to Pham et al.

Miller shows all claimed features as discussed above except for the filter material being of the same material as the spout and a flexible strand at about 120 degrees from the spout. Pham

Art Unit: 3754

show a spout with a filter material 76 made of the same material as the spout and a flexible strand 312 at about 120 degrees from the spout 305. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of the Miller to include a filter made of the same material as the spout and a stand as taught by Pham to facilitate manufacture of the spout by making the spout and the filter in one molding process and having a strand to prevent misplacing the cap.

8. Claims 18, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,762,612 to Miller in view of US 2,812,113 to Beall.

Miller shows all claimed features as discussed above except for a visual indicator for verification of the relative position of the passage. Beal shows a visual indicator, seen in Fig. 9 as a level that reads "POUR" with an arrow indicating the pour direction at least 120 degrees from the air passage 106. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Miller to include a visual indicator to facilitate the smooth and even flow of liquid during pouring and sharply cut off the flow of liquid from the container after cessation of the pouring operation as taught by Beal.

### ***Response to Arguments***

9. Applicant's arguments filed May 14, 2008 have been fully considered but they are not persuasive. In response to applicant's argument that the rejection under 35 U.S.C. 112, second paragraph, should be withdrawn because claim 1 does not positively recites a cap, claim 1 requires that the dispensing and pour opening be sealed by a cap; Therefore, the cap is positively recited in claim 1 and the cap claimed in line 1 of claim 14 is a double inclusion of the cap claimed in line 23 of claim 1.

Art Unit: 3754

In response to applicant's argument that the references fail to show a plurality of opening forming the pour opening and an air passage extending along the periphery of the cylindrical body, Miller shows a pour opening formed with a plurality of openings 29 and the air passage extends in an axial direction beyond the length of the lower portion.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the pouring device extending above the pour opening and air passage) are not recited in the rejected claim(s), the claim requires the upper portion to extend above the opening of the bottle. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the references fail to show a visual indicator of the relative locations of the pouring opening and the air passage, Baxter shows an element 66 indicating the relative locations of the pouring opening and the air passage 60.

In response to applicant's argument that the references of Pham and Beal provide no reason to be combined with the reference of Miller, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Art Unit: 3754

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELVIN A. CARTAGENA whose telephone number is (571)272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. C./

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754